

IP 96-0121-CR 2 B/F US v Wilson
Magistrate Kennard P. Foster

Signed on 11/9/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 96-121-CR -02 (B/F)
)	
STEVE WILSON,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on October 25, 2005, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on October 24, 2005, and to submit to Judge Barker proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on November 7, 2005 pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*. The government appeared by Melanie Conour, Assistant United States Attorney. The defendant appeared in person with his appointed counsel, William Dazey, Office of Indiana Federal Community Defender. Dwight Wharton, U. S. Parole and Probation officer, appeared and participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Dazey, Office of Indiana Federal Community Defender, appointed counsel, was present to represent Mr. Wilson in regard to the Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Wilson and his counsel who informed the Court that they had read and understood the specification of the alleged violation and waived further reading thereof.

3. Mr. Wilson was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violation of his supervised release contained in the pending Petition.

4. That Mr. Wilson would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Wilson had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Wilson had violated the alleged condition of supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation on October 25, 2005.

7. Mr. Wilson stated his readiness to waive the preliminary hearing as to the specification set forth in the Petition to Revoke Supervised Release. Mr. Wilson then waived, in writing, the preliminary hearing and he was held to answer.

8. The parties stipulated the following in open Court:

(1) Mr. Wilson and the government agreed they were ready to proceed to disposition on the pending Petition to REVOKE Mr. Wilson's supervised release in open Court this date.

(2) Mr. Wilson admitted that he committed the violation of the specification set forth in the Petition to Revoke Supervised Release, filed with the Court on October 24, 2005 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.”</p> <p>On October 6, 2005, Mr. Wilson’s conditions of supervision were modified to include up to 120 days residency at the Volunteers of America Community Corrections Center due to ongoing cocaine usage (please see Request for Modifying the Conditions of Supervision dated 9/29/05). The designation process was halted in light of his continued noncompliance. On October 16, 2005, the defendant failed to appear for random urine collection. On October 18, 2005, he reported to the probation officer as instructed and stated he simply forgot to call the dropline. Mr. Wilson also denied illegal drug use; however, a urine specimen was collected and it subsequently tested positive for cocaine.</p>

(3) Mr. Wilson has a relevant criminal history category of IV. *See*, U.S.S.G. §7B1.4(a).

(4) The most serious grade of violation committed by Mr. Wilson constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

(5) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Mr. Wilson is 12 to 18 months.

(6) The parties agree that the appropriate disposition for Mr. Wilson’s violation of the conditions of supervised release is revocation of supervised release, however, did not agree with regard to the amount of time to be imposed.

(7) The Court then placed Mr. Wilson under oath and inquired of him whether he admitted to the violation of supervised release contained in the Petition to Revoke Supervised Release. Mr. Wilson admitted the violation.

(8) The Court recommends a sentence of 13 months in the custody of the Attorney General and his placement and participation in an intensive controlled substance abuse treatment program. At the expiration of the 13 months in the custody of the Attorney General, there will be no further supervised release.

The Court, having heard the admission by the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Steve Wilson, violated the above-delineated condition of his supervised release. The defendant's supervised release is therefore **REVOKED**, and Steve Wilson is sentenced to 13 months in the custody of the Attorney General and recommends his placement and participation in an intensive controlled substance abuse treatment program. At the expiration of the 13 months in the custody of the Attorney General, there will be no further supervised release.

The Magistrate Judge recommends that Mr. Wharton, U. S. Parole and Probation officer, prepare for submission to the Honorable Sarah Evans Barker, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Wilson stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil*

Procedure, and S.D.Ind.L.R.72.1(d)(2), Local Rules of the U. S. District Court for the Southern District of Indiana.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Wilson's supervised release.

IT IS SO RECOMMENDED this 9th day of November, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court

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